

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**JUDGE'S COPY**copy
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TERRANCE MONTAGUE, : CIVIL NO. 1:CV-00-0395
 PLAINTIFF :
 :
 V. : (MAGISTRATE JUDGE SMYSER)
 :
 ROBERT W. MEYERS, ET AL :
 DEFENDANTS :

MOTION FOR NEW TRIAL AND/OR
AMENDMENT OF JUDGMENT UNDER RULE 59

PLAINTIFF TERRANCE MONTAGUE PURSUANT TO FED.R.CIV.P. RULE 59
 REQUEST THIS COURT FOR A NEW TRIAL (IF POSSIBLE WITHOUT A JURY) AND/OR
 AMENDMENT OF JUDGMENT ON THE FOLLOWING REASONS AND GROUNDS:

1. REASON:

A) THE EVIDENCE ON THE RECORD AND ADDUCTED AT TRIAL CLEARLY
 SHOWS AND PROVES THAT PLAINTIFF HAS A SERIOUS MEDICAL NEED,
 WHERE HE WAS DIAGNOSED BY A PHYSICIAN AS HAVING A RESPIRATORY
 DISEASE (ASTHMA), DEFENDANT'S WENT AGAINST THE DEPARTMENT OF
 CORRECTIONS' SMOKING POLICY, AND PLAINTIFF'S PLEAS FOR HELP
 AND/OR ~~THE~~ MEDICAL, AND ON A NUMBER OF OCCASIONS CELLED PLAINTIFF
 WITH HEAVY SMOKERS, WHERE THESE CELL-MATE'S TOBACCO SMOKE
 IRRITATED PLAINTIFF'S ASTHMA CAUSING HIM BREATHING PROBLEMS,
 WHERE THESE LIVING CONDITION CAUSE PLAINTIFF PAIN, DISCOMFORT,
 AND/OR WAS A THREAT TO GOOD HEALTH.

2. GROUNDS:

A) DEFECTS IN DUE PROCESS;
 B) VERDICT WAS AGAINST THE WEIGHT AND SUFFICIENCY OF THE
 EVIDENCE; AND/OR
 C) UNJUST RESULT OR MISCARRIAGE OF JUSTICE.

DATED: 2-18-02

Terrance Montague
 TERRANCE MONTAGUE, B7-2761
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BRIEF IN SUPPORT

RULE 59 OF THE FED.R.CIV.P. PROVIDES FOR THE FILING AND GRANTING
 OF THIS MOTION FOR AFORESAID REASONS AND GROUNDS.

1. IN SUPPORT OF REASONS:

A) UNDER THE CONSTITUTION, PRISON OFFICIALS NEED PROVIDE CARE
 ONLY FOR "SERIOUS MEDICAL NEEDS. ESTELLE V. GAMBLE, 429 U.S. 97,
 104, 37 S.CT. 235 (1976). TO PROVE A SERIOUS MEDICAL NEED PLAINTIFF
 MUST PROVE THAT HIS MEDICAL CONDITION WAS DIAGNOSED BY A PHYSICIAN
 AS MANDATING TREATMENT OR IS SO OBVIOUS THAT EVEN A LAY PERSON WOULD
 EASILY RECOGNIZE THE NECESSITY FOR A DOCTOR'S ATTENTION. RAMOS V.
LARA, 539 F.2D 559, 575 (10TH CIR. 1990), CERT. DENIED, 450 U.S.
 1041 (1981). OR THAT IT SIGNIFICANTLY AFFECTED PLAINTIFF'S DAILY
 ACTIVITIES. TILLERY V. OWENS, 719 F.SUPP. 1256, 1296 (W.D.PA. 1989)
 907 F.2D 418 (3D CIR. 1990). OR THAT HE LIVED UNDER CONDITIONS THAT
 CAUSE PAIN, DISCOMFORT, OR THREAT TO GOOD HEALTH. DEAN V. COUGHLIN,
 523 F.SUPP. 292, 404 (S.D.N.Y. 1985) BORETTI V. WISCOMB, 930 F.2D
 1150, 1154-55 (5TH CIR. 1991). THAT PLAINTIFF, IN THIS INSTANT ACTION
 HAS SHOWN, THAT THE EVIDENCE ON RECORD AND ADDUCTED AT TRIAL CLEARLY
 AND OVERWHELMINGLY SHOWS AND PROVES HE HAD A SERIOUS MEDICAL NEED
 AND THAT THE CONDITIONS THAT HE WAS FORCED TO LIVE UNDER VIOLATED
 THE EIGHTH AMENDMENT PROHIBITION ON UNNECESSARY AND WANTON INFLICTION
 OF PAIN. ESTELLE V. GAMBLE, 429 U.S. 97, 104, 37 S.CT. 235 (1976).

2. IN SUPPORT OF GROUNDS:

A) DEFECTS IN DUE

DEFECTS IN DUE PROCESS WILL JUSTIFY A NEW TRIAL. VIRGIN ISLANDS
NAT. BANK V. TROPICAL VENTURES, INC., D.C. VIRGIN ISLANDS, 1973,
 359 F.SUPP. 1203.

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JUDGE IS UNDER A DUTY TO GRANT A NEW TRIAL WHENEVER NEEDED TO PREVENT INJUSTICE, AND SINCE JUDGE MAY DO THIS IN HIS SOUND DISCRETION HE MAY EXERCISE THAT LESS DRASTIC ALTERNATIVE OF MAKING SUA SPONTA INTERLOCUTORY RULING ON DUE PROCESS QUESTIONS. ID.

B) WEIGHT AND SUFFICIENCY OF EVIDENCE

ON MOTION FOR NEW TRIAL, TRIAL JUDGE IS FREE TO WEIGH EVIDENCE HIMSELF AND NEED NOT VIEW IT IN LIGHT MOST FAVORABLE TO VERDICT WINNER. BEVEVION V. SAYDJARI, C.A.N.Y. 1978, 574 F.2D 679.

ON MOTION FOR NEW TRIAL, TRIAL JUDGE, EXERCISING MATURE JUDICIAL DISCRETION, SHOULD VIEW VERDICT IN OVERALL SETTING OF TRIAL, CONSIDER CHARACTER OF EVIDENCE AND COMPLEXITY OR SIMPLICITY OF LEGAL PRINCIPLES WHICH JURY WAS BOUND TO APPLY TO FACTS, AND ABSTAIN FROM INTERFERING WITH VERDICT UNLESS IT IS QUITE CLEAR THAT JURY HAS REACHED SERIOUSLY ERRONEOUS RESULT; JUDGE'S DUTY IS ESSENTIALLY TO SEE THAT THERE IS NO MISCARRIAGE OF JUSTICE. ID.

TO PREVAIL ON MOTION FOR NEW TRIAL, LOSING PARTY MUST DEMONSTRATE THAT VERDICT WAS CLEARLY OR OVERWHELMINGLY AGAINST WEIGHT OF THE EVIDENCE. PREBBLE V. BRODRICK, C.A.WYO. 1979, 535 F.2D 605.

C) UNJUST RESULT OR MISCARRIAGE OF JUSTICE

ALTHOUGH A TRIAL COURT HAS MUCH DISCRETION IN DECIDING WHETHER TO GRANT A NEW TRIAL, THE COURT MUST NOT INTERFERE WITH THE JURY VERDICT ON SUCH GROUNDS UNLESS IT IS QUITE CLEAR THAT THE JURY HAS REACHED A SERIOUSLY ERRONEOUS RESULT WHICH WOULD AMOUNT TO A MISCARRIAGE OF JUSTICE IF IT WERE LEFT STANDING. MELE V. ALL-STAR INS. CORP., D.C.PA. 1978, 453 F.SUPP. 1338.

DATED: 2-18-02

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